

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

)  
Amendment of the Commission's Rules to )  
Establish Part 27, the Wireless )  
Communications Service ("WCS") )

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COMMENTS OF AT&T WIRELESS SERVICES, INC.

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**COMMENTS OF AT&T WIRELESS SERVICES, INC.**

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys, hereby submits its comments with respect to the Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1/</sup>

**INTRODUCTION AND SUMMARY**

In determining the appropriate service area and spectrum block size for WCS licenses, the Commission should be guided by the statutory mandates of encouraging participation by a broad range of entities, accommodating the needs of the public safety community, and completing the auction and collecting all payments by September 30, 1997. AT&T believes that these goals can best be accomplished by auctioning WCS spectrum in 10 MHz blocks (5 MHz pairs) divided geographically by Major Trading Areas ("MTAs"). Unlike larger designations, this approach would not preclude small businesses and niche players from participating in the auction and obtaining licenses through competitive bidding. At the same time, the Commission's experience in the D, E, and F block auction, where more than 1400

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<sup>1/</sup> In the Matter of Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), GN Docket No. 96-228, Notice of Proposed Rulemaking, FCC 96-441 (rel. Nov. 12, 1996) ("Notice").

licenses were available, demonstrates that 153 WCS authorizations can easily be issued by the September 30 deadline.

To meet the needs of the public safety community, the Commission should reserve one of the 10 MHz blocks in each MTA for public safety uses. Under this proposal, any entity could purchase the spectrum, but the license could only be used for services such as 911, E911, and internal public safety agency communications. Given the great demand for spectrum to meet the FCC's public safety requirements, the business viability of such an allocation is feasible.

Finally, CMRS licensees should be free to obtain and use WCS licenses without risk of violating the CMRS spectrum cap. The Commission should also refrain from imposing unnecessary requirements, such as build-out deadlines, on licensees.

#### **I. LICENSES SHOULD BE ISSUED IN 10 MHZ BLOCKS ACCORDING TO MAJOR TRADING AREAS**

The Commission should make WCS spectrum available in 10 MHz blocks (5 MHz pairs) divided geographically according to MTAs.<sup>2/</sup> Auctioning spectrum in these blocks would encourage broad participation in WCS, including participation of small businesses and other designated entities, and would not risk violating the September 30, 1997 deadline for deposit of the license purchase price.<sup>3/</sup> As noted in Section IV, below, however, one 10 MHz block of the spectrum should be specifically dedicated for public safety uses.

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<sup>2/</sup> See id. at ¶ 13 ("We specifically request comment on a range of spectrum options for WCS, that is whether 5, 10, 15 or 30 MHz is the most suitable amount.").

<sup>3/</sup> AT&T also supports the Commission's initial determination to not restrict eligibility for a WCS license other than foreign ownership restrictions. See id. at ¶ 23.

**A. Moderately-Sized License Areas Encourage Broad Participation in the Auction, and Innovation and Competition in the Services Offered**

As the Commission has recognized in the PCS context, the Commission can and should issue licenses according to moderately-sized geographic areas and spectrum blocks.<sup>4/</sup> This would encourage broad participation by a wide variety of applicants, including designated entities, and would promote technical and service innovation.<sup>5/</sup> The Commission has emphasized that "[s]uch diversity may be an important benefit during the initial period of . . . implementation when the market and services are still being defined."<sup>6/</sup>

By designating 10 MHz MTA-sized licenses, the Commission would further Congress's goal of encouraging "the development and rapid deployment of new technologies, products, and services for the benefit of the public."<sup>7/</sup> Service areas and spectrum blocks sized as AT&T suggests would open up the auction to small businesses and other entities that might wish to develop niche or technically innovative services.<sup>8/</sup> In contrast, the financial commitment associated with regional licenses or large spectrum blocks would discourage

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<sup>4/</sup> The Commission's policy pronouncements in the PCS context are particularly instructive. First, PCS and WCS share a crucial characteristic: the market and range of services are largely undefined and thus more market driven than other services for which the Commission issues licenses. Second, a likely use of WCS spectrum will be for CMRS services; indeed, unless the applicant notifies the FCC otherwise, it will "presume that a WCS licensee is providing a CMRS service . . . ." Id. at ¶ 32.

<sup>5/</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket 90-314, 8 FCC Rcd 7700, 7733, ¶¶ 75-77 (1993) (Basic Trading Areas).

<sup>6/</sup> Id., 8 FCC Rcd at 7733, ¶ 75; see Notice at ¶ 23 ("a wide range of applicants will permit and encourage entrepreneurial efforts to develop new technologies and services").

<sup>7/</sup> See 47 U.S.C. § 309(j)(3)(A).

<sup>8/</sup> See Notice at ¶ 62.

experimentation with new service applications. Moreover, AT&T's proposed approach does not carry the same risk as other designated entity accommodations, such as installment plans, of delaying the payment of auction revenues beyond the September 30, 1997 deadline for collection of all payments for licenses.<sup>9/</sup> It also does not carry the same risk of court challenges and other delays related to determining whether other measures, such as bidding credits, are permissible and which entities qualify for special treatment.<sup>10/</sup>

Relatively small WCS license areas and spectrum blocks will complement the Commission's proposed lenient partitioning and disaggregation rules as a means of providing designated entities an opportunity to participate in WCS.<sup>11/</sup> At the same time, the Commission's proposed liberal aggregation policies would ensure that, to the extent that spectrum is most efficiently utilized in service areas larger than MTAs or in blocks larger than 10 MHz, carriers are free to acquire it.<sup>12/</sup>

Finally, as the Commission recognizes, WCS license allocations must take into account the needs of the public safety community.<sup>13/</sup> As discussed below, dividing the

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<sup>9/</sup> See id. at ¶ 63 (the September 30, 1997 deadline leads the Commission to "tentatively conclude that installment payment plans would be an inappropriate mechanism for encouraging designated entity participation in the WCS auction").

<sup>10/</sup> See id.

<sup>11/</sup> See id. at ¶ 62.

<sup>12/</sup> See id. at ¶ 13. In a number of other contexts, the Commission has determined that MTAs are appropriately-sized service areas for wireless operations. See, e.g., 47 C.F.R. 51.701(b)(2) (establishing MTAs as local calling areas for purposes of the transport and termination rules). Maintaining general consistency in service area size would lessen administrative burdens on both licensees and the Commission.

<sup>13/</sup> Id. at ¶ 22.

WCS spectrum into three blocks would permit multiple wireless applications in each market, including a specific designation for public safety uses. In addition, because the needs of public safety agencies are frequently local in scope, it is not necessary to fashion service areas larger than MTAs.

**B. The Commission Can Auction Three Licenses per MTA and Meet the September 30, 1997 Deadline**

There is every reason to believe that the Commission would be able to complete an auction of three WCS licenses per MTA and receive all payments by the statutory deadline of September 30, 1997. The Commission can expect to improve on the fairly rapid auction of the 1400 PCS licenses in the D, E and F blocks, which total over nine times the number of WCS licenses that would be auctioned under AT&T's proposal.<sup>14/</sup> Moreover, the flexible nature of WCS licenses should encourage decisive bidding by motivated applicants, and the wide variety of services allowed on WCS spectrum should reduce "bidder anxiety" regarding bidders' ability to compete with incumbent providers of a particular service. If a WCS licensee finds that the market for a particular service cannot accommodate another provider, the licensee may offer a different service for which the market is not as crowded.

In addition, the Commission has a variety of tools for effectively speeding the bidding process, and should use them. For example, the Commission can institute several rounds of bidding per day, as it has in the auction of the D, E and F blocks of PCS licenses.<sup>15/</sup> The

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<sup>14/</sup> The D, E, and F block auction began on August 26, 1996 and appears to be in the process of winding down.

<sup>15/</sup> The D, E, and F block auction is proceeding at four rounds of bidding per day.

Commission can also require a minimum opening bid,<sup>16/</sup> and should set such a bid high enough to deter speculative bidders.<sup>17/</sup> The Commission can ensure that the bidding moves forward at the desired pace by raising the bidding participation threshold of the "activity rule" and reducing the number of waivers to the rule granted to each bidder.<sup>18/</sup> Once the auction is complete, Section 3001(c) of the Appropriations Act<sup>19/</sup> sets short deadlines for filing petitions to deny WCS applications, and the Commission proposes fairly short deadlines for responding to petitions to deny and payment of the balance of the winning bid if the petition is denied.<sup>20/</sup> Thus, to the extent that the statutory deadline is a factor in the Commission's decision regarding the appropriate service area and spectrum block for auction, the Commission can adequately address its concern through auction procedures.

## **II. WCS SPECTRUM SHOULD NOT COUNT AGAINST THE CMRS SPECTRUM CAP EVEN IF IT IS USED TO PROVIDE CMRS**

Although it is unclear whether the most efficient use of WCS spectrum would be to provide CMRS, counting such use against the CMRS spectrum cap would plainly be

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<sup>16/</sup> Notice at ¶ 44. The Commission declined to set a minimum opening bid in the D, E, and F block auction.

<sup>17/</sup> AT&T recommends that the Commission set the minimum opening bid at 60 cents per pop.

<sup>18/</sup> For example, at the beginning of the D, E and F block auction, the Commission required activity on 80 percent of a bidder's eligibility, rather than the 60 percent level it had used in previous auctions. The Commission should commence the WCS auction at the same or higher activity level. The Commission could also reduce the number of activity rule waivers from five to two.

<sup>19/</sup> Omnibus Consolidated Appropriations for the Fiscal Year Ending September 30, 1997, Pub. L. 104-208, 110 Stat. 3009, § 3001 ("Appropriations Act").

<sup>20/</sup> See Notice at ¶ 52.



inefficient and unnecessary.<sup>21/</sup> Moreover, given the status of competition in the CMRS industry, there is no reason to count use of WCS spectrum for CMRS against the CMRS spectrum cap.<sup>22/</sup> With licenses distributed and in use by a multitude of providers for cellular, PCS and SMR services in each geographic market, the Commission has met the goals of the CMRS spectrum cap.<sup>23/</sup> There is no reason to believe that the current diffuse distribution of licenses would be significantly changed by declining to count WCS spectrum toward the CMRS cap.

By applying the WCS spectrum to the CMRS spectrum cap, the Commission also risks handicapping the ability of CMRS providers to use their WCS spectrum to provide the services most desired by the public. In the event that consumers demand more CMRS, providers at or near the limit of the cap would be unable to respond fully and their WCS

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<sup>21/</sup> AT&T supports the Commission's determination that licensees should be able to use their spectrum for the "broad[est] range of fixed, mobile, radio location and broadcasting-satellite services." Id. at ¶ 9.

<sup>22/</sup> There are two cellular licenses in almost every United States market. In addition, six PCS licenses have been, or will shortly be, awarded and buildout and initiation of service by a number of PCS providers around the country is proceeding apace. See "PCS Week's Active PCS Systems List," PCS Week, at 6-7 (Nov. 20, 1996); "PrimeCo Rolls Out CDMA-Based Service in 15 Cities," PCS Week, at 1, 3-4 (Nov. 20, 1996); "Omnipoint Launches New York City GSM Network," PCS Week, at 1-3 (Nov. 20, 1996).

<sup>23/</sup> As the Commission states in the Notice:

The spectrum cap is intended to promote a vigorous and competitive market for the provision of commercial mobile radio services, and to ensure that each mobile service provider (*i.e.*, cellular, PCS or SMR licensee) has the opportunity to obtain sufficient spectrum to compete effectively and that no single provider is able to preclude the provision of service by effective competitors or significantly reduce the number of competitors by aggregating spectrum.

Notice at ¶ 24.

spectrum would be relegated to another, less-than-optimal use. Considering that the defining characteristic of WCS spectrum is that it will be used to provide "the mix of services most desired by the public,"<sup>24/</sup> the Commission should seek to avoid such a result.

Such a restriction may also discourage many CMRS providers from participating in the WCS auction, which would result in "lost economies of scale and scope"<sup>25/</sup> in the development and deployment of services using the WCS spectrum and could unnecessarily reduce auction revenues. CMRS providers have considerable experience in the wireless industry and their existing facilities and technical knowledge could speed innovative service to the public. Through their active participation in the auctions to date, these CMRS providers have demonstrated their willingness and ability to make rapid and efficient use of the spectrum. If current CMRS providers are unable to use WCS spectrum for one of its more valuable purposes, they are unlikely to participate in the auction. Moreover, applying the CMRS spectrum cap to WCS spectrum would prevent CMRS providers from obtaining this spectrum after the auction, which would reduce its post-auction marketability and, therefore, its auction value.<sup>26/</sup>

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<sup>24/</sup> Id. at ¶ 9; see also id. at ¶ 18 (the Commission must "seek to promote the most efficient use of the spectrum" in making these frequencies available for competitive bidding; citing 47 U.S.C. § 309(j)(6)(F)).

<sup>25/</sup> Notice at ¶ 25.

<sup>26/</sup> The Notice indirectly raises the question of whether the CMRS spectrum cap should be retained at all. The state of competition in the CMRS market, which is a strong basis for not counting WCS spectrum against the CMRS cap, counsels equally toward abolishing the cap entirely. For this reason, the Commission should initiate a proceeding promptly to examine whether elimination of the spectrum cap is warranted in light of changed circumstances.

### **III. BUILD-OUT REQUIREMENTS ARE NOT NECESSARY TO ENCOURAGE EXPEDITIOUS PROVISION OF SERVICE TO ALL AREAS**

AT&T agrees with the Commission's proposal to forego construction deadlines for WCS licensees. The Commission has identified several reasons why build-out requirements are unnecessary and may be harmful in the WCS context.<sup>27/</sup>

AT&T notes that, except for the fact that WCS licenses can be put to a wider range of uses than CMRS licenses, all of the "safeguards" that obviate the need for build-out requirements are equally present in markets for CMRS licenses awarded by auction. The same liberal partitioning and disaggregation rules, incentives provided by acquiring licenses through auction, policies advancing universal service, and dangers of "uneconomic construction" from build-out requirements apply to the CMRS market.<sup>28/</sup> Thus, consistent with its goals of regulatory parity, the Commission should eliminate build-out requirements for all CMRS licenses.

### **IV. THE COMMISSION SHOULD DEDICATE 10 MHZ OF SPECTRUM FOR PUBLIC SAFETY USES**

As the Commission notes, it is statutorily required "to take into account the needs of public safety radio services in making the WCS spectrum available through competitive bidding."<sup>29/</sup> The Commission should "satisfy[] the immediate and future needs of the public safety community," as identified by the Public Safety Wireless Advisory Committee

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<sup>27/</sup> See *id.* at ¶¶ 56-60.

<sup>28/</sup> *Id.* at ¶¶ 59-60.

<sup>29/</sup> *Id.* at ¶ 19.

("PSWAC"),<sup>30/</sup> by allocating three 10 MHz blocks (5 MHz pairs) in each market and designating one block for public safety uses. Under this proposal, any entity would be allowed to bid on the public safety block of spectrum, but it could only be used for services such as 911, E911 and communications between emergency service personnel.<sup>31/</sup>

AT&T's proposal satisfies both the requirement that the spectrum be auctioned and the requirement that the Commission to do so in a manner that accommodates the needs of the public safety community.<sup>32/</sup> Because the Act does not restrict the manner in which the Commission provides for public safety needs, reserving 10 MHz for public safety use would be a reasonable accommodation of multiple statutory directives.<sup>33/</sup>

At a minimum, should the Commission decide not to set aside a 10 MHz block for public safety uses, it should condition the grant of each WCS authorization on the licensee's

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<sup>30/</sup> Id. at ¶ 20 (citing final report issued by the Public Safety Wireless Advisory Committee ("PSWAC Final Report")).

<sup>31/</sup> Spectrum reserved in this manner would be auctionable and valuable because many carriers would be willing to lease capacity or resell emergency services in order to meet their 911 obligations imposed by the Commission's rules. Additional spectrum for these services would be used by carriers such as AT&T, either by leasing it to fulfill their public safety obligations, or by obtaining the spectrum through the WCS auction and reselling excess capacity to carriers that do not wish to fulfill their public safety obligations using the spectrum they obtained through other auctions.

<sup>32/</sup> See Appropriations Act, § 3001(b)(2); see also Letter from the Hon. Tom Daschle, United States Senator, to Hon. Reed Hundt, Chairman, Federal Communications Commission (Nov. 7, 1996) (the WCS "auction should take into account public safety needs").

<sup>33/</sup> The PSWAC Final Report states that over the short term, the public safety community will need 25 MHz of spectrum to fully discharge its duty to protect the lives and property of United States citizens. PSWAC Final Report, Executive Summary at 2. Setting aside one 10 MHz of block of WCS spectrum for public safety purposes would go a long way toward satisfying PSWAC's spectrum needs.

pledge to meet the needs of the public safety community by dedicating access if the licensee offers CMRS services employing WCS spectrum.<sup>34/</sup> In this regard, WCS licensees that provide CMRS should be required to provide a specified percentage of their capacity for public safety uses on a primary use basis.<sup>35/</sup>

## CONCLUSION

For the foregoing reasons, the Commission should auction WCS licenses in 10 MHz blocks sized according to MTAs, and should designate one of the blocks in each MTA for

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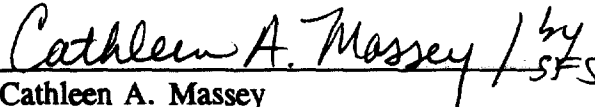
<sup>34/</sup> The primary need at this point of the public safety community is dedicated access to CMRS. AT&T believes that it would be unfair to require WCS licensees to construct the facilities necessary to provide CMRS capability to public safety entities if the licensee is not itself using its WCS spectrum to provide CMRS.

<sup>35/</sup> Dedicating channels in this manner will obviate the need for priority use requirements such as those proposed in the FCC's Cellular Priority Access Service proceeding. See Public Notice, Commission Seeks Comment on Petition for Rulemaking Filed by National Communications System, WT Docket No. 96-86, DA 96-604 (Apr. 18, 1996) (proposing to give emergency response personnel priority access to cellular channels during disaster situations).

public safety purposes. In addition, the Commission should eliminate the buildout requirements and not subject WCS spectrum to the CMRS spectrum cap.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I, Cheryl Flood, do hereby certify that on this 4th day of December, 1996, I caused a copy of the foregoing "Comments of AT&T Wireless Services, Inc." to be delivered by messenger (\*) or first class mail to the following:

  
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